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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FREDERICK L. BUSCH, an individual, Plaintiff, vs. BMW OF NORTH AMERICA, LLC, and DOES 1 through 10, inclusive, Defendants. } Case No.: 5:17-cv-1278 TJH (RAOx)  
} (Removed from Riverside Superior Court  
} Case No. PSC1702757)  
} Judge: Terry J. Hatter, Jr.  
} Magistrate: Rozella A. Oliver  
} STIPULATED PROTECTIVE ORDER;  
} [PROPOSED] ORDER

## 1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the  
2 following Stipulated Protective Order. The parties acknowledge that this Order does  
3 not confer blanket protections on all disclosures or responses to discovery and that the  
4 protection it affords from public disclosure and use extends only to the limited  
5 information or items that are entitled to confidential treatment under the applicable  
6 legal principles.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer and pricing lists and  
9 other valuable research, development, commercial, financial, technical and/or  
10 proprietary information for which special protection from public disclosure and from  
11 use for any purpose other than prosecution of this action is warranted. Such  
12 confidential and proprietary materials and information consist of, among other  
13 things, confidential business or financial information, information regarding  
14 confidential business practices, or other confidential research, development, or  
15 commercial information (including information implicating privacy rights of third  
16 parties), information otherwise generally unavailable to the public, or which may be  
17 privileged or otherwise protected from disclosure under state or federal statutes,  
18 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
19 information, to facilitate the prompt resolution of disputes over confidentiality of  
20 discovery materials, to adequately protect information the parties are entitled to keep  
21 confidential, to ensure that the parties are permitted reasonable necessary uses of  
22 such material in preparation for and in the conduct of trial, to address their handling  
23 at the end of the litigation, and serve the ends of justice, a protective order for such  
24 information is justified in this matter. It is the intent of the parties that information  
25 will not be designated as confidential for tactical reasons and that nothing be so  
26 designated without a good faith belief that it has been maintained in a confidential,  
27 non-public manner, and there is good cause why it should not be part of the public

record of this case.

**C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a specific showing of good cause or compelling reasons with proper evidentiary support and legal justification, must be made with respect to Protected Material that a party seeks to file under seal. The parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL does not—without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking

1 protection must articulate compelling reasons, supported by specific facts and legal  
2 justification, for the requested sealing order. Again, competent evidence supporting  
3 the application to file documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in  
5 its entirety will not be filed under seal if the confidential portions can be redacted. If  
6 documents can be redacted, then a redacted version for public viewing, omitting  
7 only the confidential, privileged, or otherwise protectable portions of the document,  
8 shall be filed. Any application that seeks to file documents under seal in their  
9 entirety should include an explanation of why redaction is not feasible.

10 2. **DEFINITIONS**

11 2.1 Action: Frederick L. Busch v. BMW of North America, LLC, United  
12 States District Court for the Central District of California, Case No. 5:17-cv-1278  
13 TJH (RAOx).

14 2.2 Challenging Party: a Party or Non-Party that challenges  
15 the designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless  
17 of how it is generated, stored or maintained) or tangible things that qualify for  
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well  
21 as their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information  
23 or items that it produces in disclosures or in responses to discovery as  
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information,  
26 regardless of the medium or manner in which it is generated, stored, or maintained

1 (including, among other things, testimony, transcripts, and tangible things), that  
2 are produced or generated in disclosures or responses to discovery in this matter.

3       2.7    Expert: a person with specialized knowledge or experience in a  
4 matter pertinent to the litigation who has been retained by a Party or its counsel to  
5 serve as an expert witness or as a consultant in this Action.

6       2.8    House Counsel: attorneys who are employees of a party to this  
7 Action. House Counsel does not include Outside Counsel of Record or any other  
8 outside counsel.

9       2.9    Non-Party: any natural person, partnership, corporation, association  
10 or other legal entity not named as a Party to this action.

11       2.10   Outside Counsel of Record: attorneys who are not employees of a  
12 party to this Action but are retained to represent or advise a party to this Action  
13 and have appeared in this Action on behalf of that party or are affiliated with a  
14 law firm that has appeared on behalf of that party, and includes support staff.

15       2.11   Party: any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and  
17 their support staffs).

18       2.12   Producing Party: a Party or Non-Party that produces Disclosure  
19 or Discovery Material in this Action.

21       2.13   Professional Vendors: persons or entities that provide litigation  
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
23 or demonstrations, and organizing, storing, or retrieving data in any form or  
24 medium) and their employees and subcontractors.

25       2.14   Protected Material: any Disclosure or Discovery Material that  
26 is designated as “CONFIDENTIAL.”

27       2.15   Receiving Party: a Party that receives Disclosure or Discovery  
28 Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or extracted  
4 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
5 Protected Material; and (3) any testimony, conversations, or presentations by Parties  
6 or their Counsel that might reveal Protected Material. Any use of Protected Material at  
7 trial shall be governed by the orders of the trial judge. This Order does not govern the  
8 use of Protected Material at trial.

9 4. DURATION

10 Once a case proceeds to trial, information that was designated as  
11 **CONFIDENTIAL** or maintained pursuant to this protective order used or  
12 introduced as an exhibit at trial becomes public and will be presumptively  
13 available to all members of the public, including the press, unless compelling  
14 reasons supported by specific factual findings to proceed otherwise are made to  
15 the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81  
16 (distinguishing “good cause” showing for sealing documents produced in  
17 discovery from “compelling reasons” standard when merits-related documents are  
18 part of court record). Accordingly, the terms of this protective order do not extend  
19 beyond the commencement of the trial.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
22 Party or Non-Party that designates information or items for protection under this  
23 Order must take care to limit any such designation to specific material that qualifies  
24 under the appropriate standards. The Designating Party must designate for protection  
25 only those parts of material, documents, items or oral or written communications that  
26 qualify so that other portions of the material, documents, items or communications for

1 which protection is not warranted are not swept unjustifiably within the ambit of this  
2 Order. Mass, indiscriminate or routinized designations are prohibited. Designations  
3 that are shown to be clearly unjustified or that have been made for an improper  
4 purpose (e.g., to unnecessarily encumber the case development process or to impose  
5 unnecessary expenses and burdens on other parties) may expose the Designating Party  
6 to sanctions. If it comes to a Designating Party's attention that information or items  
7 that it designated for protection do not qualify for protection, that Designating Party  
8 must promptly notify all other Parties that it is withdrawing the inapplicable  
9 designation.

10       5.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
12 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
13 Order must be clearly so designated before the material is disclosed or produced.  
14 Designation in conformity with this Order requires:

15           (a) for information in documentary form (e.g., paper or electronic documents,  
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
17 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter  
18 "CONFIDENTIAL legend"), to each page that contains protected material. If only a  
19 portion of the material on a page qualifies for protection, the Producing Party also  
20 must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
21 the margins).

22       A Party or Non-Party that makes original documents available for inspection need  
23 not designate them for protection until after the inspecting Party has indicated which  
24 documents it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for inspection shall be deemed  
26 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
27  
28

1 copied and produced, the Producing Party must determine which documents, or  
2 portions thereof, qualify for protection under this Order. Then, before producing the  
3 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”  
4 to each page that contains Protected Material. If only a portion of the material on a  
5 page qualifies for protection, the Producing Party also must clearly identify the  
6 protected portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identifies the  
8 Disclosure or Discovery Material on the record, before the close of the deposition all  
9 protected testimony.

10 (c) for information produced in some form other than documentary and for any  
11 other tangible items, that the Producing Party affix in a prominent place on the  
12 exterior of the container or containers in which the information is stored the legend  
13 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
14 protection, the Producing Party, to the extent practicable, shall identify the protected  
15 portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
17 to designate qualified information or items does not, standing alone, waive the  
18 Designating Party’s right to secure protection under this Order for such material.  
19 Upon timely correction of a designation, the Receiving Party must make reasonable  
20 efforts to assure that the material is treated in accordance with the provisions of this  
21 Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
24 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
26 process under Local Rule 37.1 et seq.

1       6.3 The burden of persuasion in any such challenge proceeding shall be on the  
2 Designating Party. Frivolous challenges, and those made for an improper purpose  
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
4 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
5 or withdrawn the confidentiality designation, all parties shall continue to afford the  
6 material in question the level of protection to which it is entitled under the Producing  
7 Party's designation until the Court rules on the challenge.

8       7. ACCESS TO AND USE OF PROTECTED MATERIAL

9       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a Non-Party in connection with this  
11 Action only for prosecuting, defending or attempting to settle this Action. Such  
12 Protected Material may be disclosed only to the categories of persons and under the  
13 conditions described in this Order. When the Action has been terminated, a Receiving  
14 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

15       Protected Material must be stored and maintained by a Receiving Party at a  
16 location and in a secure manner that ensures that access is limited to the persons  
17 authorized under this Order.

18       7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
19 ordered by the court or permitted in writing by the Designating Party, a Receiving  
20 Party may disclose any information or item designated  
21 “CONFIDENTIAL” only to:

22       (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
24 disclose the information for this Action;

25       (b) the officers, directors, and employees (including House Counsel) of  
26 the Receiving Party to whom disclosure is reasonably necessary for this Action;

27       (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure  
28 is reasonably necessary for this Action and who have signed the

1      “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
2                (d) the court and its personnel;  
3                (e) court reporters and their staff;  
4                (f) professional jury or trial consultants, mock jurors, and Professional  
5 Vendors to whom disclosure is reasonably necessary for this Action and who have  
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7                (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information;

9                (h) during their depositions, witnesses, and attorneys for witnesses, in the  
10 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
11 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will  
12 not be permitted to keep any confidential information unless they sign the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
14 by the Designating Party or ordered by the court. Pages of transcribed deposition  
15 testimony or exhibits to depositions that reveal Protected Material may  
16 be separately bound by the court reporter and may not be disclosed to anyone except  
17 as permitted under this Stipulated Protective Order; and

18                (i) any mediator or settlement officer, and their supporting personnel, mutually  
19 agreed upon by any of the parties engaged in settlement discussions.

20        8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
21        OTHER LITIGATION

22        If a Party is served with a subpoena or a court order issued in other litigation  
23 that compels disclosure of any information or items designated in this Action as

24                “CONFIDENTIAL,” that Party must:

25                (a) promptly notify in writing the Designating Party. Such notification shall  
26 include a copy of the subpoena or court order;

27                (b) promptly notify in writing the party who caused the subpoena or order  
28 to issue in the other litigation that some or all of the material covered by the

1 subpoena or order is subject to this Protective Order. Such notification shall include a  
2 copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with  
6 the subpoena or court order shall not produce any information designated in this  
7 action as “CONFIDENTIAL” before a determination by the court from which the  
8 subpoena or order issued, unless the Party has obtained the Designating Party’s  
9 permission. The Designating Party shall bear the burden and expense of seeking  
10 protection in that court of its confidential material and nothing in these provisions  
11 should be construed as authorizing or encouraging a Receiving Party in this Action to  
12 disobey a lawful directive from another court.

13 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**  
**IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a  
15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
16 produced by Non-Parties in connection with this litigation is protected by the remedies  
17 and relief provided by this Order. Nothing in these provisions should be construed as  
18 prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to produce  
20 a Non-Party’s confidential information in its possession, and the Party is subject to an  
21 agreement with the Non-Party not to produce the Non-Party’s confidential  
22 information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-Party that  
24 some or all of the information requested is subject to a confidentiality agreement with  
25 a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
27 Order in this Action, the relevant discovery request(s), and a reasonably specific

1 description of the information requested; and

2 (3) make the information requested available for inspection by the Non-Party, if  
3 requested.

4 (c) If the Non-Party fails to seek a protective order from this court within 14  
5 days of receiving the notice and accompanying information, the Receiving Party may  
6 produce the Non-Party's confidential information responsive to the discovery request.  
7 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
8 any information in its possession or control that is subject to the confidentiality  
9 agreement with the Non-Party before a determination by the court. Absent a court  
10 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
11 protection in this court of its Protected Material.

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
14 Protected Material to any person or in any circumstance not authorized under this  
15 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
16 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
17 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
18 persons to whom unauthorized disclosures were made of all the terms of this Order,  
19 and (d) request such person or persons to execute the "Acknowledgment and  
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
22 PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain  
24 inadvertently produced material is subject to a claim of privilege or other protection,  
25 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
26 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
27 may be established in an e-discovery order that provides for production without prior  
28 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or  
2 information covered by the attorney-client privilege or work product protection, the  
3 parties may incorporate their agreement in the stipulated protective order submitted to  
4 the court.

5 **12. MISCELLANEOUS**

6 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any  
7 person to seek its modification by the Court in the future.

8 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this  
9 Protective Order, no Party waives any right it otherwise would have to object to  
10 disclosing or producing any information or item on any ground not addressed in this  
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
12 ground to use in evidence of any of the material covered by this Protective Order.

13 **12.3 Filing Protected Material.** A Party that seeks to file under seal any  
14 Protected Material must comply with Local Civil Rule 79-5. Protected Material may  
15 only be filed under seal pursuant to a court order authorizing the sealing of the  
16 specific Protected Material at issue. If a Party's request to file Protected Material  
17 under seal is denied by the court, then the Receiving Party may file the information in  
18 the public record unless otherwise instructed by the court.

19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, as defined in paragraph 4, within 60  
21 days of a written request by the Designating Party, each Receiving Party must return  
22 all Protected Material to the Producing Party or destroy such material. As used in this  
23 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
24 summaries, and any other format reproducing or capturing any of the Protected  
25 Material. Whether the Protected Material is returned or destroyed, the Receiving  
26 Party must submit a written certification to the Producing Party (and, if not the same  
27 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
28 (by category, where appropriate) all the Protected Material that was returned or

1 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
2 abstracts, compilations, summaries or any other format reproducing or capturing any  
3 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
4 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
5 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
6 reports, attorney work product, and consultant and expert work product, even if such  
7 materials contain Protected Material. Any such archival copies that contain or  
8 constitute Protected Material remain subject to this Protective Order as set forth in  
9 Section 4 (DURATION).

10 14. VIOLATION

11 Any violation of this Order may be punished by appropriate measures  
12 including, without limitation, contempt proceedings and/or monetary sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: March 1, 2018

BOWMAN AND BROOKE LLP

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BY: /s/ Michael J. Hurvitz

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Brian Takahashi  
Richard L. Stuhlbarg  
Michael J. Hurvitz  
Attorneys for Defendant  
BMW OF NORTH AMERICA, LLC

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DATED: March 1, 2018

CONSUMER LAW OFFICE OF ROBERT  
STEMPLER APC

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BY: /s/ Robert Stempler

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Robert Stempler  
Co-counsel for Plaintiff

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14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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DATED: March 2, 2018

Rozella A. Oliver

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HONORABLE ROZELLA A. OLIVER  
United States Magistrate Judge

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## **EXHIBIT A**

## **CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Frederick Busch v. BMW of North America, LLC, et. al, United States District Court for the Central District of California, Case No. 5:17-cv-1278 TJH (RAOx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_